

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE MAY 14, 2009

SENATE BILL

No. 677

Introduced by Senator Yee

February 27, 2009

An act to ~~amend Section 3352~~ *add and repeal Section 3352.1* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 677, as amended, Yee. Workers' compensation: exclusions: farming operations.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment. Existing law requires employers to secure this payment either by being insured by one or more insurers duly authorized to write compensation insurance in this state or by securing from the Director of Industrial Relations a certificate of consent to self-insure. Existing law excludes various persons from the definition of employee for purposes of these provisions.

This bill would, *until January 1, 2013*, exclude any person employed by his or her parent, child, spouse, or registered domestic partner, or by the spouse or registered domestic partner of his or her parent or child, in a farming operation that is registered with the director or the director's designee and meets certain specified conditions. The bill would require the owner or owners of the farming operation to submit specified information when registering with the director or the director's designee. The bill would provide that this information shall become public record, except as specified. The bill would, *however, authorize not more than*

3,000 registrations within a calendar year under these provisions and would provide that registration shall be in effect for one year, except as specified.

This bill would provide that if any of the conditions of registration are violated, the farming operation shall be deemed to have failed to secure the payment of compensation and shall be subject to the resulting penalties. The bill would also provide that a violation of the conditions shall constitute good cause for the director or the director's designee to cancel the farming operation's registration.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3352.1 is added to the Labor Code, to
2 read:

3 3352.1. (a) (1) "Employee" excludes a person employed by
4 his or her parent, child, spouse, or registered domestic partner;
5 or by the spouse or registered domestic partner of his or her parent
6 or child, in a farming operation that is registered with the director
7 or the director's designee and meets all of the following conditions:

8 (A) (i) The farming operation shall be wholly owned by one or
9 more of the family members described in this subdivision.

10 (ii) The farming operation shall be conducted on land that is
11 owned by, or leased to, the person or persons who own the farming
12 operation.

13 (B) The owner's taxable income on the state income tax return
14 that he or she filed with the state during the 12-month period
15 preceding registration shall not exceed ten thousand dollars
16 (\$10,000). If there are multiple owners of the farming operation,
17 a single ten-thousand-dollar (\$10,000) limit shall apply to the
18 combined taxable income of all the owners.

19 (C) The owner or owners of the farming operation shall be in
20 compliance with all other applicable provisions of this code. Any
21 violation of this code by the owner or owners of the farming
22 operation shall prompt the director or the director's designee to
23 cancel the farming operation's registration and the exclusion under
24 this subdivision shall no longer apply.

1 (D) *The person or persons that the owner or owners of the*
2 *farming operation seek to exclude from being an employee*
3 *pursuant to this subdivision shall be covered by health insurance.*

4 (E) *While the farming operation is registered pursuant to this*
5 *subdivision, the farming operation and its owners shall not do any*
6 *of the following:*

7 (i) *Employ the services of any person who is otherwise an*
8 *employee for purposes of this chapter.*

9 (ii) *Employ or utilize, directly or indirectly, any labor by*
10 *independent contractors or farm labor contractors.*

11 (iii) *Furnish services to any person as an employee, independent*
12 *contractor, or farm labor contractor or employee thereof.*

13 (2) *The director or the director's designee may register not*
14 *more than 3,000 farming operations within a calendar year.*
15 *Registration with the director or the director's designee pursuant*
16 *to this subdivision shall remain in effect for a period of one year,*
17 *unless the director or the director's designee cancels the*
18 *registration pursuant to subparagraph (C) of paragraph (1) or*
19 *subparagraph (B) of paragraph (3).*

20 (3) (A) *If any of the conditions listed in paragraph (1) are*
21 *violated while the farming operation's registration is in effect, the*
22 *employer shall be deemed to have failed to secure the payment of*
23 *compensation as required by Section 3700, and Sections 3700.5,*
24 *3710.1, and 3722 shall apply.*

25 (B) *If any of the conditions listed in paragraph (1) are violated*
26 *while the farming operation's registration is in effect, the director*
27 *or the director's designee shall have good cause to cancel the*
28 *operation's registration.*

29 (4) *Registration requires the farming operation to provide all*
30 *of the following to the director or the director's designee:*

31 (A) *Proof that any persons that the owner or owners of the*
32 *farming operation seek to exclude from being an employee*
33 *pursuant to this subdivision are covered by health insurance.*

34 (B) *Proof of the amount of the owner or owners taxable income*
35 *during the 12-month period preceding registration.*

36 (C) *The names and ages of the persons employed by the farming*
37 *operation.*

38 (D) *A signed affidavit that no occupational injuries or illnesses*
39 *have occurred on the farm during the 12-month period preceding*
40 *registration.*

1 (E) (i) *Proof that the owner or owners of the farming operation*
2 *cannot afford the workers' compensation policy premium that*
3 *would apply to the operation in the year for which exclusion*
4 *pursuant to this subdivision is sought.*

5 (ii) *A verified quote from a licensed insurer for the workers'*
6 *compensation policy that the owner or owners of the farming*
7 *operation cannot afford.*

8 (5) *The information required by paragraph (4) shall become*
9 *public record, with the following exceptions:*

10 (A) *Copies of tax returns shall not be public record and shall*
11 *not be discoverable in any civil action.*

12 (B) *The space where any social security numbers are required*
13 *to be disclosed on the registration form shall be redacted from*
14 *public disclosure.*

15 (b) *This section shall remain in effect only until January 1, 2013,*
16 *and as of that date is repealed, unless a later enacted statute, that*
17 *is enacted before January 1, 2013, deletes or extends that date.*

18 ~~SECTION 1. Section 3352 of the Labor Code is amended to~~
19 ~~read:~~

20 ~~3352. "Employee" excludes the following:~~

21 ~~(a) Any person defined in subdivision (d) of Section 3351 who~~
22 ~~is employed by his or her parent, spouse, or child.~~

23 ~~(b) Any person performing services in return for aid or~~
24 ~~sustenance only, received from any religious, charitable, or relief~~
25 ~~organization.~~

26 ~~(c) Any person holding an appointment as deputy clerk or deputy~~
27 ~~sheriff appointed for his or her own convenience, and who receives~~
28 ~~no compensation from the county or municipal corporation or from~~
29 ~~the citizens thereof for his or her services as the deputy. This~~
30 ~~exclusion is operative only as to employment by the county or~~
31 ~~municipal corporation and does not deprive any person so~~
32 ~~deputized from recourse against a private person employing him~~
33 ~~or her for injury occurring in the course of and arising out of the~~
34 ~~employment.~~

35 ~~(d) Any person performing voluntary services at or for a~~
36 ~~recreational camp, hut, or lodge operated by a nonprofit~~
37 ~~organization, exempt from federal income tax under Section 101(6)~~
38 ~~of the Internal Revenue Code, of which he or she or a member of~~
39 ~~his or her family is a member and who receives no compensation~~
40 ~~for those services other than meals, lodging, or transportation.~~

1 ~~(e) Any person performing voluntary service as a ski patrolman~~
2 ~~who receives no compensation for those services other than meals~~
3 ~~or lodging or the use of ski tow or ski lift facilities.~~

4 ~~(f) Any person employed by a ski lift operator to work at a snow~~
5 ~~ski area who is relieved of and not performing any prescribed~~
6 ~~duties, while participating in recreational activities on his or her~~
7 ~~own initiative.~~

8 ~~(g) Any person, other than a regular employee, participating in~~
9 ~~sports or athletics who receives no compensation for the~~
10 ~~participation other than the use of athletic equipment, uniforms,~~
11 ~~transportation, travel, meals, lodgings, or other expenses incidental~~
12 ~~thereto.~~

13 ~~(h) Any person defined in subdivision (d) of Section 3351 who~~
14 ~~was employed by the employer to be held liable for less than 52~~
15 ~~hours during the 90 calendar days immediately preceding the date~~
16 ~~of the injury for injuries, as defined in Section 5411, or during the~~
17 ~~90 calendar days immediately preceding the date of the last~~
18 ~~employment in an occupation exposing the employee to the hazards~~
19 ~~of the disease or injury for injuries, as defined in Section 5412, or~~
20 ~~who earned less than one hundred dollars (\$100) in wages from~~
21 ~~the employer during the 90 calendar days immediately preceding~~
22 ~~the date of the injury for injuries, as defined in Section 5411, or~~
23 ~~during the 90 calendar days immediately preceding the date of the~~
24 ~~last employment in an occupation exposing the employee to the~~
25 ~~hazards of the disease or injury for injuries, as defined in Section~~
26 ~~5412.~~

27 ~~(i) Any person performing voluntary service for a public agency~~
28 ~~or a private, nonprofit organization who receives no remuneration~~
29 ~~for the services other than meals, transportation, lodging, or~~
30 ~~reimbursement for incidental expenses.~~

31 ~~(j) Any person, other than a regular employee, performing~~
32 ~~officiating services relating to amateur sporting events sponsored~~
33 ~~by any public agency or private, nonprofit organization, who~~
34 ~~receives no remuneration for these services other than a stipend~~
35 ~~for each day of service no greater than the amount established by~~
36 ~~the Department of Personnel Administration as a per diem expense~~
37 ~~for employees or officers of the state. The stipend shall be~~
38 ~~presumed to cover incidental expenses involved in officiating,~~
39 ~~including, but not limited to, meals, transportation, lodging, rule~~
40 ~~books and courses, uniforms, and appropriate equipment.~~

1 ~~(k) Any student participating as an athlete in amateur sporting~~
2 ~~events sponsored by any public agency, public or private nonprofit~~
3 ~~college, university, or school, who receives no remuneration for~~
4 ~~the participation other than the use of athletic equipment, uniforms,~~
5 ~~transportation, travel, meals, lodgings, scholarships, grants-in-aid,~~
6 ~~or other expenses incidental thereto.~~

7 ~~(l) Any law enforcement officer who is regularly employed by~~
8 ~~a local or state law enforcement agency in an adjoining state and~~
9 ~~who is deputized to work under the supervision of a California~~
10 ~~peace officer pursuant to paragraph (4) of subdivision (a) of Section~~
11 ~~832.6 of the Penal Code.~~

12 ~~(m) Any law enforcement officer who is regularly employed~~
13 ~~by the Oregon State Police, the Nevada Department of Motor~~
14 ~~Vehicles and Public Safety, or the Arizona Department of Public~~
15 ~~Safety and who is acting as a peace officer in this state pursuant~~
16 ~~to subdivision (a) of Section 830.32 of the Penal Code.~~

17 ~~(n) Any person, other than a regular employee, performing~~
18 ~~services as a sports official for an entity sponsoring an~~
19 ~~intercollegiate or interscholastic sports event, or any person~~
20 ~~performing services as a sports official for a public agency, public~~
21 ~~entity, or a private nonprofit organization, which public agency,~~
22 ~~public entity, or private nonprofit organization sponsors an amateur~~
23 ~~sports event. For purposes of this subdivision, "sports official"~~
24 ~~includes an umpire, referee, judge, scorekeeper, timekeeper, or~~
25 ~~other person who is a neutral participant in a sports event.~~

26 ~~(o) Any person who is an owner-builder, as defined in~~
27 ~~subdivision (a) of Section 50692 of the Health and Safety Code,~~
28 ~~who is participating in a mutual self-help housing program, as~~
29 ~~defined in Section 50087 of the Health and Safety Code, sponsored~~
30 ~~by a nonprofit corporation.~~

31 ~~(p) (1) Any person employed by his or her parent, child, spouse,~~
32 ~~or registered domestic partner, or by the spouse or registered~~
33 ~~domestic partner of his or her parent or child, in a farming~~
34 ~~operation that is registered with the director or the director's~~
35 ~~designee and meets all of the following conditions:~~

36 ~~(A) (i) The farming operation shall be wholly owned by one~~
37 ~~or more of the family members described in this subdivision.~~

38 ~~(ii) The farming operation shall be conducted on land that is~~
39 ~~owned by, or leased to, the person or persons who own the farming~~
40 ~~operation.~~

1 ~~(B) The owner's taxable income on the state income tax return~~
2 ~~that he or she filed with the state during the 12-month period~~
3 ~~preceding registration shall not exceed ten thousand dollars~~
4 ~~(\$10,000). If there are multiple owners of the farming operation,~~
5 ~~a single ten-thousand-dollar (\$10,000) limit shall apply to the~~
6 ~~combined taxable income of all the owners.~~

7 ~~(C) The owner or owners of the farming operation shall be in~~
8 ~~compliance with all other applicable provisions of the Labor Code.~~
9 ~~Any violation of the Labor Code by the owner or owners of the~~
10 ~~farming operation shall prompt the director or the director's~~
11 ~~designee to cancel the farming operation's registration and the~~
12 ~~exclusion under this subdivision shall no longer apply.~~

13 ~~(D) The person or persons that the owner or owners of the~~
14 ~~farming operation seek to exclude from being an employee~~
15 ~~pursuant to this subdivision shall be covered by health insurance.~~

16 ~~(E) While the farming operation is registered pursuant to this~~
17 ~~subdivision, the farming operation and its owners shall not do any~~
18 ~~of the following:~~

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20 ~~employee for purposes of this chapter.~~

21 ~~(ii) Employ or utilize, directly or indirectly, any labor by~~
22 ~~independent contractors or farm labor contractors.~~

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